IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 488 OF 2007

Kashinath Eknath Kakade ..Petitioner
Vs.
Sundarabi Kashinath Kakade and anr. ..Respondents

Mr. Ajay Joshi for petitioner.
Mr. D.R. More, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 17, 2007.

P.C.:

1. Heard the learned counsel for the petitioner-husband. The respondent-wife had filed Criminal Misc.Application No. 323 of 2003 and claimed maintenance under Section 125 of Cr.P.C. The said application was rejected by the learned 3rd JMFC at Pandharpur on the grounds that the applicant could not prove that she was legally wedded wife of the non-applicant, she could not prove that she was unable to maintain herself and that the applicant had failed to prove that the non-applicant was having sufficient means to pay maintenance.

2. The respondent-wife, therefore, challenged the order passed by the learned JMFC in Criminal Revision Application No. 69 of 2006 and the same has been allowed by the learned Addl. Sessions Judge at Pandharpur vide his judgment and order dated 11/1/2007. Hence this petition by the husband.

3. The learned Addl. Sessions Judge reversed the findings of the trial court on all the issues. He referred to the depositions of the applicant-wife. She had stated that she was married to the non-applicant about 40 years back and subsequently the non-applicant married for the second and third time. His second marriage was with a lady called Nagarbai of Eklaspur and the third marriage was with one Suman from Upari. In support of her statement about the multiple marriages of the non-applicant, she examined Shri Dnynoba Pore, who was of 81 years of age at the relevant time and this witness stated before the court that the applicant was married with the non-applicant at the first instance. Though the non-applicant did not step in the witness box, he examined one witness by name Sopan Tatyaba Kakade who only stated that the

non-applicant was married to Nagarbai. The revision court has drawn adverse inference against the non-applicant-husband as he did not step in the witness box and the revision court also relied upon the evidence of Shri Dnynoba Pore and held that the applicant was the legally wedded wife of the non-applicant and for this finding the revision court also relied upon the voter's list. The applicant's name was appearing at Sr.No.603 as Kakade Sunderabai Kashinath in the voter's list.

4. It is, therefore, evident that the view taken by the learned JMFC was grossly erroneous and contrary to the evidence on record. The revision court rightly stepped in and allowed the revision application. No interference is called for in the impugned order directing the petitioner to pay maintenance at the rate of Rs.800/- p.m. to the present respondent no.1-wife.

5. The petition is rejected summarily.

(B.H. Marlapalle,J.)